

Award No. 6111

Docket No. PC-6017

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Fred W. Messmore, Referee

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS, PULLMAN SYSTEM

THE PULLMAN COMPANY

STATEMENT OF CLAIM: The Order of Railway Conductors, Pullman System, claims for and in behalf of Conductor M. E. Thomas, Minneapolis District, that The Pullman Company violated Rules 7, 14, 22 and 23 of the Agreement between The Pullman Company and its Conductors, when,

1. On August 11, 1950, Conductor Thomas was given an assignment to deadhead Minneapolis, Minn., to Altoona, Wis., thence in extra service, Altoona to Duluth, Minn., where released. He was then to deadhead Duluth to Minneapolis.
2. We now ask that for the deadhead trip, Duluth to Minneapolis, Conductor Thomas be credited and paid 7:30 hours, a minimum day, instead of 5:10 hours, which he did receive, reporting Duluth 12:50 P. M., August 12, released Minneapolis 6:00 P. M. same date.
3. On August 12, 1950, Conductor Thomas was given an assignment to deadhead Minneapolis to Drummond, where released. He was to go in extra service from Drummond to Spooner, Wis., on August 13, 1950 and then continue in deadhead service Spooner to Minneapolis.
4. We now ask that for the extra service trip Drummond to Spooner, Conductor Thomas be credited and paid 7:30 hours, a minimum day, instead of 3:30 hours which he did receive reporting in Drummond at 7:00 P. M., August 13, released in Spooner, 10:30 P. M., same date.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement between The Pullman Company and Conductors in its service, effective September 1, 1945, revised effective January 1, 1948. Also a Memorandum of Understanding Concerning Assignment of Extra Conductors, effective Sept. 22, 1947, shown at pages 58-59 of the above mentioned Agreement.

This dispute has been progressed up to and including the highest officer of the Carrier designated for that purpose, whose letter denying the claims is attached as Exhibit No. 1.

Conductor M. E. Thomas was assigned to deadhead from Minneapolis to Altoona on August 11, 1950. He was then to go in extra service from Altoona to Duluth on C&NW Train #513. On arrival Duluth he was to

Company and its conductors involving the Organization's demand that the rules of the Agreement, effective September 1, 1945, revised, effective January 1, 1948, be revised, which dispute was progressed to an Emergency Board created July 6, 1950, through Executive Order of the President of the United States, the Organization requested that Rule 14 be eliminated. In denying the Organization's request, the Board, with Ernest M. Tipton sitting as Chairman thereof, stated that in fairness to conductors, the conductors should be paid for the short interval involved and that in fairness to the Company, continuity of service should not be deemed to have been progressed under such circumstances. On this point, the Board stated in its Report to the President, page 177, as follows:

"The present rule, in identical language, has been part of the various agreements between the conductors and this carrier for almost three decades. It was originally proposed by the Organization, and it has continued from time to time to be advocated and supported by the Organization. It operates to pay a conductor for time released from duty, when less than one hour, as well as to prevent claims for separate assignments when the service of the conductor is thus briefly interrupted. In fairness to the conductors, payment should be made for so short an interval, since such freedom from duty is of no practical value to them; but by the same token, in fairness to the Company, continuity of service should not be deemed to have been broken in these circumstances, so as to provide a basis of pay for separate assignments."

CONCLUSION

In this submission The Pullman Company has shown that Thomas was properly credited and paid for work performed on the trips in question. Rule 14, which is the controlling rule in this dispute, requires that when release from duty is less than one hour, no deduction shall be made from the continuity of time. Additionally, Rules 6, 7, 22, and 23 support Management's position in connection with the manner in which Thomas was credited and paid for work performed. The claim should be denied.

The Company affirms that all data submitted herewith in support of its position have heretofore been presented in substance to the employe or his representative and made a part of the question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: This case involves two claims which relate to Pullman Conductor M. E. Thomas with respect to whether or not he has been properly compensated.

It appears from the record that on August 11, 1950, Conductor Thomas was assigned to deadhead from Minneapolis, where he reported at 10:45 P. M., to Altoona at which point he was released from deadhead service at 1:45 A. M., August 12, 1950 (elapsed time three hours). He reported at 11:45 A. M., for extra service Altoona to Duluth. He was released from service at Duluth at 12:50 P. M., (elapsed time 11:05 hours). Thomas reported at 12:50 P. M., for deadhead service Duluth to Minneapolis and was released at Minneapolis at 6 P. M., (elapsed time 5:10 hours). Conductor Thomas was paid for the deadhead trips and the extra service trip on a continuous time basis for a total of 19:15 hours. He claims 7:30 hours for the deadhead trip Duluth to Minneapolis for which he was credited and paid 5:10 hours; that he was shorted 2:20 hours and claims pay for the time shorted.

There is no dispute but that the Carrier had the right to couple the deadhead trip Minneapolis to Altoona, which was three hours, with the extra road trip of 11:05 hours Altoona to Duluth. This is permitted under question and answer No. 1, Rule 23.

The Employees contend the Carrier violated Rules 7 and 23 when it did not allow Conductor Thomas credit and pay for the 7½ hours, a minimum day, for the deadhead trip Duluth to Minneapolis, August 12, 1950.

We set forth the rules involved in this dispute.

Rule 7 of the Agreement reads: "Deadhead Service. Conductors dead-heading on passes or cars on Company business (except in connection with witness service) shall be allowed credit for actual time up to 11¼ hours for each 24-hour period from time required to report, with a minimum credit of 7½ hours where overnight trips are involved. Q-1. Shall different trips deadheading on passes or equipment within a 24-hour period be coupled together and treated as one movement? A-1. Yes, provided both trips are completed within a 24-hour period and no other class of service has intervened. Q-2. What is meant by an overnight trip under this rule? A-2. Any operation where the spread of the trip includes the hours from 12:00 midnight to 6:00 A. M."

Rule 14 reads: "Release Less Than One Hour. When release from duty is less than one hour, no deduction shall be made from the continuity of time."

Rule 22 of the Agreement refers to "Extra Service" and reads: "Conductors shall be paid at their respective established hourly rates for all hours credited each month for extra road service, deadhead on cars, deadhead on passes, extended special tours, station duty, witness duty, held for service, called and not used and all other non-road service. Time credited in excess of 235 hours each month shall be paid for at the rate of time and one-half." Q-1. What is 'extra road service'? A-1. 'Extra road service' is any revenue producing trip, exclusive of an extended special tour, not covered by a Conductor's regular assignment."

Rule 23 of the Agreement reads: "7½ Hour Minimum Payments. Conductors in extra road service or deadheading on passes or with equipment or in combinations of any such services who perform less than 7½ hours' service from reporting time until released shall be credited and paid not less than 7½ hours, a minimum day. Q-1. Is it permissible to couple deadhead trips of less than 7½ hours and extra road service and treat such combined service as a single movement? A-1. Yes, provided the Conductor is not released between the different classes of service, and this combining of services is not used for the purpose of making a deduction for rest en route."

The Employees assert that under the rules as heretofore set out, more specifically question and answer No. 1 under Rule 7, and Rule 23, the road service trip from Altoona to Duluth voided the Carrier's right to couple the deadhead trips from Minneapolis to Altoona and from Duluth to Minneapolis and treat them as one deadhead trip performed within a 24-hour period, for the reason that question No. 1 and the answer thereto under Rule 7 prohibits the combination of a continuous time basis of two deadhead trips where another class of service intervenes; that in the instant case a distinct and separate class of service did intervene between the two deadhead trips, namely the service trip; therefore, the second deadhead trip, Duluth to Minneapolis, must be paid the minimum of 7½ hours as provided for in Rule 23 which is a pay rule.

The Carrier takes the position that it did not pay for the two deadhead trips involved in the assignment given Conductor Thomas on August 11, under the provisions of question and answer No. 1 of Rule 7; that each of the trips was combined with the extra service trip from Altoona to Duluth on a continuous time basis under the provisions of Rules 14 and 23, thus the deadhead trip from Duluth to Minneapolis, reporting at 12:50 P. M., August 12 and released at Minneapolis 6:00 P. M., August 12, was coupled with the extra service trip between Altoona and Duluth immediately preceding it because Conductor Thomas was released from duty less than one hour be-

tween the trip Altoona-Duluth and the deadhead trip Duluth-Minneapolis; and that Rule 14 requires the Carrier to pay a conductor on a continuous time basis where the release from duty between trips is less than one hour.

It appears in Claim No. 2, that on August 12, 1950, Conductor Thomas reported at 10:45 P. M., for deadhead trip Minneapolis to Drummond and was released at Drummond at 9:00 A. M. (elapsed time 10:15 hours). He reported for extra service Drummond to Spooner at 7:00 P. M., August 13, and was released at Spooner at 10:30 P. M. (elapsed time 3:30 hours). He immediately went into deadhead service Spooner to Minneapolis and was released at Minneapolis at 9:25 A. M., August 14 (elapsed time 10:55 hours). The Employees ask that the extra service trip Drummond to Spooner, elapsed time 3:30 hours, be paid 7:30 hours, a minimum day, as required by Rule 23.

In this connection the Employees contend that Rule 23, as interpreted by question and answer No. 1, prohibits the Carrier from combining extra road service with a deadhead trip where the deadhead trip is $7\frac{1}{2}$ hours or more; that since each of the deadhead trips was more than $7\frac{1}{2}$ hours, question and answer No. 1, Rule 23, prohibited the coupling of the extra road service with the deadhead trip where the deadhead trip is $7\frac{1}{2}$ hours or more; that since each of the deadhead trips was more than $7\frac{1}{2}$ hours, question and answer No. 1, Rule 23, prohibited the coupling of the deadhead trips with the extra service trip; and that in no event could Rule 14 nullify the minimum established by Rule 23, consequently Conductor Thomas is entitled to be paid as contended for by the Employees.

The Carrier's position with respect to the combining of extra service trip Drummond to Spooner and the deadhead trip Spooner to Minneapolis is the same as the position taken by it in Claim No. 1, that is, since Conductor Thomas was released at Spooner at 10:30 P. M., August 13, upon completion of the extra service trip and reported immediately for the deadhead trip from Spooner to Minneapolis, Rule 14 required the Carrier to compensate Conductor Thomas on a continuous time basis. Therefore, Conductor Thomas properly was entitled to only 3:30 hours pay for the 3:30 hours embraced in the extra service trip.

It is true that question and answer No. 1, Rule 23, refer only to the combining of deadhead trips of less than $7\frac{1}{2}$ hours with extra service. However, the Carrier applies Rule 23, " $7\frac{1}{2}$ Hour Minimum Payments." We repeat the rule: "Conductors in extra road service or deadheading on passes or with equipment or in combinations of any such services who perform less than $7\frac{1}{2}$ hours' service from reporting time until released shall be credited and paid not less than $7\frac{1}{2}$ hours, a minimum day." It is obvious the minimum payments provided for by Rule 23 were intended to apply only where the extra road service, deadheading, or combinations of such service, was less than $7\frac{1}{2}$ hours. In the instant case the combination of extra service and deadheading in each instance exceeded $7\frac{1}{2}$ hours. Therefore, Conductor Thomas was not entitled to any minimum payments under Rule 23.

We believe that Award 3754 lends support to the Carrier's position in the instant case. Without stating the facts, the principle is provided by the following language in the Award: "A consideration of Rules 7, 22 and 23 and the examples cited in connection with them leads us to conclude that regular road service may be combined with deadhead service and treated as one movement where the Conductor is not released but is paid for continuous time; that Rule 23 was intended only to furnish a minimum for payment in case of disconnected irregular road service and deadheading for periods shorter than $7\frac{1}{2}$ hours."

It is apparent that Rule 14 operates to pay a Conductor for time released from duty when less than one hour, as well as to prevent claims for separate assignments when the service of the Conductor is thus briefly interrupted. In fairness to the Conductors, payment should be made for so short an interval since such freedom from duty is of no practical value to them, but by

the same token, in fairness to the Company, continuity of service should not be deemed to have been broken in these circumstances so as to provide a basis of pay for separate assignments. See Emergency Board proceedings in the record. The Board interpreted Rule 14 as having a dual purpose of coupling service and pay therefor on a continuous time basis when Employees are released for less than one hour.

From an analysis of the record and the applicable rules, we conclude that Claims should be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

From an analysis of the record and the applicable rules, we conclude that Claims should be denied.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 26th day of February, 1953.